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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,331	11/06/2003	Gary M. Johnson		7920

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Robert E. Kleve
1103 24th Ave. S.
Grand Forks, ND 58201

EXAMINER

SAKRAN, VICTOR N

ART UNIT PAPER NUMBER

3677

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/702,331

Applicant(s)

JOHNSON, GARY M. *gs*

Examiner

VICTOR N SAKRAN

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 1 and 2, are objected to because of the following informalities:
since the term "the cover" as recited in said claims has no proper antecedent basis for such term, it appears that such term it should read - - the lid - -.
Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 1, is rejected under 35 U.S.C. 103(a) as being unpatentable over Parks U. S. Patent No. 6,675,977 in view of Johnson U. S. Patent No. 4,860,408 and Lierman U. S. Patent No. 3,291,515.

Parks discloses the general combination claimed of a strap for securing a pan or other container comprising an elongated elastic strap (16) having fastening members at each end thereof defining outer opposing hooks, wherein each of said fastener members is provided with pin projecting means (13) disposed rearward of said hook; see Figures 1-5; the abstract; column 2, lines 63-67; column 3, lines 39-45, and claim 1, except that the reference to Parks does not disclose an elongated sleeve member fitted over the elastic strap having opening for receiving projection pins and not using the strap for securing a lid onto a container. Johnson teaches the use of an elongated tube member (14) having openings (47, 48) for receiving the loop (45) (projection) formed at the end of its hook (42) in a strap fastening device assembly; see Figures 2,3,6; column 11, lines 17-25. Lierman teaches the use of an elastic member for holding a lid onto a container comprising a hook mounted at each end thereof and the container having opposing projecting handles for receiving its hooks in order to secure the lid onto the container; see Figure 1 and claim 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the strap device assembly in Parks with an elongated sleeve member having opening at each end thereof for receiving its projections (13) in order to

secure the sleeve to the strap and furthermore to use the strap device in Parks for securing a lid onto a container in the manner taught, disclosed and suggested by Johnson and Lierman respectively, especially, since such modification involves only routine skill in the art.

Claims 2-4, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lierman U. S. Patent No. 3,291,515 in view of Rasdell et al U. S. Patent No. 5,313,669.

Lierman discloses Applicants claimed device of a lid flexible member for holding a lid onto a container, wherein said container having opposing projecting handles, said flexible member having fastening members mounted at each end of said flexible member, said fastening members each having outer opposing hooks adapted to be fastened to the handles of the container in order to secure the lid to said container; except that the reference to Lierman does not disclose an elastic strap and a flexible sleeve detachably mounted to over the strap. Rasdell et al teaches the use of an elastic strap (16) and a flexible sleeve adapted to be detachably mounted over the strap; see Figures 1,2, and column 5, lines 11-14. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid device in Lierman with an elastic strap by merely substituting the elastic strap of Rasdell et al for the flexible member in Lierman and furthermore providing its device (Lierman) with a flexible sleeve member to be detachably mounted over the strap in the manner taught, disclosed

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and suggested by Rasdell et al; especially, since the use of such structure elements (elastic strap and flexible sleeve) are conventional and well known within the art.

Furthermore, Applicant is reminded that in considering the disclosure of a reference, it is proper to take into account not only specific teaching of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom; see *In re Preda*, 401 F2d 825, 826, 159 USPQ 342,344 (CCPA1968).

As to the particular type of material used is considered to be no more than an obvious matter of design choice within the skill in the art, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. See *In Re Leshin*, 125 USPQ 416.

Moreover, the particular location and/or the arrangement selected of an elements is also considered to be no more than an obvious matter of design choice to one having ordinary skill within the art, especially, since it has been held that rearranging pa an invention is involves only routine skill in the art. See *In Re Japikse*, 86 USPQ 70.


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant's attention is directed to the art cited herein, as showing structure related to Applicant's disclosed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR N SAKRAN whose telephone number is 703-308-2224. The examiner can normally be reached on 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. swann can be reached on 703-308-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 25, 2004


VICTOR N SAKRAN
Primary Examiner
Art Unit 3677